

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****FIRST APPEAL No. 1466 of 2007****For Approval and Signature:****HONOURABLE MR.JUSTICE P.B.MAJMUDAR**

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1 Whether Reporters of Local Papers may be allowed  
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy  
of the judgment ?

4 Whether this case involves a substantial question  
of law as to the interpretation of the  
constitution of India, 1950 or any order made  
thereunder ?

5 Whether it is to be circulated to the civil judge  
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**FIROZKHAN PIRKHAN PATHAN & 1 - Appellant(s)**  
**Versus**  
**GUJARAT STATE WAQF BOARD & 1 - Defendant(s)**

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Appearance :

MR PRITESH L PARIKH for Appellant(s) : 1 - 2.

MR HEMANT MAKWANA, AGP for respondent No.1

MR N ALVI for respondent No. 2

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**CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR****Date : 13/03/2007****ORAL JUDGMENT**

ADMIT.

Mr. Hemant Makwana, learned Assistant Government Pleader and Mr. N. Alvi, learned advocate, waive service of notice of admission on behalf of respondents No.1 and 2 respectively.

Respondent No.2 herein, Nurul Mashaikh Haji Saiyed Nuruddin Junedbaba Rifai is the original applicant before the Civil Civil Court, Ahmedabad who had preferred Civil Misc. Applicant No. 455 of 2005. The said application was preferred for appointing him as a Trustee of the Trust, known as Shahaliji Gamdhani Dargah and Masjid, Raikhad, Ahmedabad. The case of respondent No.2 before the trial Court is that there is a registered Trust in the name of Shahaliji Gamdhani Dargah and Masjid having registration No. B/151 under section 47 of the Bombay Public Trusts Act. It is the case of the said applicant that a person can be appointed as a Trustee by the District Court. The Trustees originally appointed have died and at present there is no trustee of the aforesaid Trust. It is also the case of the original applicant that one Darulum Shaealam was appointed to manage the affairs of the Trust by the order of the Court dated 18.07.1959 in Civil Misc. Application No. 128 of 1956 but now he is not willing to manage the said Trust. Accordingly, the said application was filed by the above applicant for appointing him as Trustee. The trial Court issued public notice calling upon objections but since nobody has objected, the learned trial Judge, by the impugned order, appointed respondent No. 2 as Trustee of the above Trust. The present appellants have challenged the said order by filing an appeal and an application for leave to appeal as they were not parties before the trial Court. This Court, vide its

order dated 08.03.07 has permitted the appellants to prosecute the appeal.

Learned advocate Mr. Tirmizi for the appellants submitted that since the advertisement was given in Jansatta daily, which do not have wide circulation in the area, the advertisement went unnoticed and therefore none objected. He submitted that had the advertisement been given in a daily newspaper having wider circulation in the area, several people could have noticed it and raised objections which could have been considered by the trial Court.

Learned advocate Mr. Alvi for respondent No. 2 submitted that he has no objection if the matter is remanded to the trial Court with a direction to issue a fresh advertisement at the cost of the present appellants. Mr. Hemant Makawana, learned AGP also states that he has no objection if the said course is adopted so that respective claims/objections, if any, can be considered by the trial Court.

In view of the consensus prevailing between the parties, this appeal is allowed by remanding the matter to the trial Court. An application for advertisement may be made jointly by the present appellants and the respondent to publish a fresh advertisement in Gujarat Samachar, and the cost for such advertisement shall be borne by the present appellants. Thereupon, the trial Court shall give a fresh advertisement in Gujarat Samachar. The present appellants may also apply before the trial Court for joining them as parties. If any such application is received from the present appellants, the trial Court

shall join them as parties to the proceedings. Thereafter, fresh advertisement will be given in Gujarat Samachar so that whosoever interested may know about the pendency of the proceedings. After considering the objections if any, the trial Court shall pass fresh order in accordance with law. It is clarified that it will be open for the trial Court to consider the claim of the present respondent No.2 as well as of the present appellants who are permitted to be joined as parties before the trial Court. It is, however, clarified that the question of appointing Trustee is entirely left to the trial Court and such order may be passed in accordance with law and as per evidence on record and after considering all the objections, if any, received.

With a view to see that there is no vacuum in managing the affairs of the Trust, till fresh order as above is passed by the trial Court, the respondent No.2 shall continue to work as a trustee.

The appeal is accordingly allowed. The impugned order passed by the trial Court is set aside subject to the aforesaid observations.

In view of the above order passed in the main appeal, Civil Applications No. 3805/07 and 3806/07 do not survive and stand disposed of accordingly.

[P. B. MAJMUDAR, J.]

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